



Northern
Ireland
Office

**Proposed Draft
Criminal Justice
(Northern Ireland)
Order 2007**

Explanatory Document

November 2007

NORTHERN IRELAND OFFICE

**PROPOSED DRAFT ORDER IN COUNCIL UNDER SECTION 85 OF THE
NORTHERN IRELAND ACT 1998**

**PROPOSED DRAFT CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER
2007**

EXPLANATORY DOCUMENT

This Explanatory Document has been prepared by the Northern Ireland Office to assist the understanding of the proposed draft Criminal Justice (Northern Ireland) Order 2007 and to help inform consideration of the proposal. It does not form part of the Order.

The document should be read in conjunction with the proposal. It is not meant to be a comprehensive description of the proposal so when a draft Article or part of a draft Article does not require additional explanation or comment, none is given.

Comments on the proposals should be submitted in writing to:-

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**Written comments should be submitted by post, fax or e-mail to arrive
no later than THURSDAY 31 JANUARY 2008.**

Further copies of the proposal; this document; and copies of the supporting equality screening documentation for the proposals (see Part IV of this document) may be obtained free of charge from the above address. They are also available on the Northern Ireland Office website: <http://www.nio.gov.uk>.

These documents can also be made available in different formats, for individuals with particular needs, on request. A text-phone facility is also available by phoning 028 9052 7668.

The Northern Ireland Office is committed to publishing a list of those organisations that comment on these proposals and to making available, to anyone who asks for it, a copy of the comments and of our response to them.

If you do not wish your comments to be published in this way, you must make this clear in any response you submit.

If you have any questions concerning the documentation or the consultation process please contact Criminal Law Branch who will be pleased to assist you.

If you have any complaints or concerns about the consultation process, you should contact the Northern Ireland Office's consultation co-ordinator, Donna Knowles, on 02890 527015, or e-mail at Donna.Knowles@nio.x.gsi.gov.uk.

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PART I: INTRODUCTION

1.1 The proposed draft Criminal Justice (Northern Ireland) Order 2007 has six Parts, the main elements of which are new sentencing powers (Part 2); risk assessment and management of certain offenders in the community (Part 3); a series of road traffic offences and penalties (Part 4); and a range of miscellaneous matters to enhance the law in a number of areas (Part 5). These are supplemented by 7 Schedules.

1.2 Part 2 contains proposals for changes to the range of sentences available to the courts particularly in relation to dangerous offenders. The proposed legislation would create public protection sentences for serious sexual and violent offenders and establish post-release supervision on release from prison. In parallel new powers are proposed to increase the management of low-risk offenders in the community by way of electronic tagging, the expansion of curfew orders, and the creation of a non-custodial alternative for fine default.

1.3 Part 3 contains proposals to more effectively manage the risk posed by certain offenders in the community by a multi-agency risk management approach.

1.4 Part 4 contains powers to address three broad areas relating to road traffic. They are powers to deal with bad driving, drink driving and police powers.

1.5 Part 5 contains a range of provisions including powers around the purchase and consumption of alcohol and combating alcohol-related disorder; increased penalties for offences relating to knives; and a range of other matters including amendments to prison law, the availability of video links for giving evidence in court, legal aid, police powers under PACE and the proving of arrest warrants, "ASBO" and youth justice law.

1.6 Collectively the Order has a number of purposes. The proposals are designed to increase public protection at a range of levels: through the introduction of new sentences for dangerous sexual and violent offenders and post-release supervision; by tackling knife crime; and at a different level by creating new powers around drinking in public. By adjusting curfew powers, introducing electronic monitoring, and providing a community alternative to custody for fine default, the proposals are also aimed at ensuring that custody is only used for those offenders who merit it.

1.7 In other areas the provisions are designed to improve the operational efficiency of existing processes and in certain matters to allow Northern Ireland to keep pace with developments in other jurisdictions. Across a range of areas, the proposed Order is aimed at the ongoing development of an effective body of criminal law for Northern Ireland.

1.8 An overview of the provisions is outlined in Part II with a more detailed description of individual Articles provided in Part III of this Explanatory Document.

1.9 Subject to the consultation stage and Parliamentary consideration thereafter, commencement of the proposed Order's provisions will be by order of the Secretary of State. Commencement of sentencing powers will be staged with prioritisation being given to the removal of remission and enactment of public protection sentences along with supporting licence and recall mechanisms

PART II: OVERVIEW OF THE PROVISIONS OF THE PROPOSED DRAFT ORDER

2.1 The proposed draft Order (“the Order”) is divided into six separate Parts. After an Introductory Part, the Order deals with, in turn, Sentencing powers; Risk Assessment and Management; Road Traffic offences; Miscellaneous and Supplementary provisions; and a Supplementary Part.

Part 1 - Introductory

2.2 This Part provides for the title, commencement and most interpretation provisions in the Order. In overall terms it allows for different provisions to be commenced at different times and in different ways. Provisions will commence by order of the Secretary of State and some within one month of the Order being approved by Parliament.

Part 2 – Sentencing

Dangerous Offenders

2.3 Chapter 1 provides for the introduction of new measures for the sentencing and assessment of dangerous violent and sexual offenders. Dangerousness is assessed as whether there is a significant risk of serious harm to members of the public by the commission of further such offences. Serious harm means death or serious personal injury whether physical or psychological.

2.4 If an offender has been assessed as dangerous and has been convicted of a specified and serious sexual or violent offence with a maximum penalty of 10 years or more, he will receive either a discretionary life sentence, an indeterminate custodial sentence (an “ICS”), or an extended custodial sentence (an “ECS”). The offender would only receive an ICS if the court considers that an extended sentence would not be adequate to protect the public from serious harm and will specify a minimum term or “tariff” which the offender is required to serve in custody. Unless revoked, the licence remains in place for life. The “tariff” must be at least two years.

2.5 A dangerous offender who has been convicted of a specified sexual or violent offence for which the maximum penalty is less than 10 years will be given an ECS. This sentence will be a determinate sentence of at least one year and offenders will become eligible for release at the half way point. In addition to the custodial part, courts will set extended supervision periods of up to five years for violent offenders and eight years for sexual offenders.

2.6 When considering a public protection sentence, dangerousness will be assessed by the court as to whether there is a significant risk of serious harm to members of the public by the commission of further such offences. Serious harm means death or serious personal injury whether physical or psychological. Dangerousness assessments will be based on reports specifically prepared for that purpose by specialists including probation officers, psychiatrists or psychologists.

2.7 New arrangements are created for prison sentences and for prisoners' release on licence; recall to prison following breach of licence requirements; and further re-release.

2.8 Release from the public protection sentences will involve a new independent body of Parole Commissioners for Northern Ireland. On completion of the ICS tariff, the offender is risk assessed by the Parole Commissioners. The prisoner can be released or required to remain in prison until the risk has sufficiently diminished to allow release and supervision in the community. For an ECS, release would be possible during the second half of the sentence based on the Parole Commissioners risk assessment. If not released at that point, the person must be released at the end of the custodial part.

2.9 Following release, all public protection prisoners will be on licence and under supervision. During their licence period – for the ICS sentence that could be in place for life; for the ECS that could be up to 8 years – prisoners may be recalled to custody by the Secretary of State for breach of conditions. Any recalls will be reviewed by the Parole Commissioners.

Custodial Sentences

2.10 Chapter 2 contains general provisions on custodial sentences. These include restrictions on imposing discretionary custodial sentences, appropriate lengths of custodial sentences, splitting discretionary custodial sentences into custody and licence parts, and procedural requirements for imposing discretionary custodial sentences. Provisions are also made for additional requirements in the case of mentally disordered offenders and for the disclosure of pre-sentence reports. For the purposes of legislative consolidation, Chapter 2 replicates these provisions from the Criminal Justice (NI) Order 1996.

Release on Licence

2.11 Chapter 3 creates revised arrangements for prisoners' release on licence; recall to prison following breach of licence requirements; and further re-release. Offenders serving standard determinate sentences will be released on licence at a point determined by the court. For prison sentences of less than 12 months, the court will set licence conditions; for longer sentences (those of 12 months or more), the Secretary of State will set licence conditions taking into consideration the court's recommendations. On release, offenders sentenced to custody will be placed under supervision. This new form of imprisonment will replace unconditional release at the half-way point and remove automatic 50% remission.

Curfews and Electronic Monitoring

2.12 New powers will allow increased use of curfews as a condition of bail; as a condition or requirement attached to certain non-custodial sentences; and as a condition of a licence on release from custody. The parallel creation of powers for electronic monitoring or 'tagging' will allow also the effective monitoring of curfews and, therefore, their wider use in preference to custodial sentences or remands in custody.

2.13 The proposals also provide the Secretary of State with a power to release early a standard determinate prisoner subject to curfew and electronic monitoring requirements. Any such release will be subject to strict conditions and can only occur towards the end of the sentence. Such release could be used to facilitate re-integration into the community and to reduce the risk of re-offending.

Supervised Activity Orders

2.14 Chapter 5 and Schedule 3 create a Supervised Activity Order available to the court as an alternative to committal to custody for fine default. Rather than being sent to prison for non-payment of a fine, courts will be able to impose a community-based alternative.

2.15 The “SAO” will be available for fines up to £500 and will have a minimum of 10 hours and maximum of 100 hours activity requirement. Activities will be set and supervised by a supervising officer. Failure to comply can result in a longer prison sentence than would have been the case had a custodial period been set in the first instance.

Parole Commissioners

2.16 Chapter 6 and Schedules 4 and 5 create a body of independent Parole Commissioners for Northern Ireland to assess dangerous offenders’ suitability for release into the community and to review decisions recalling licensed prisoners to custody. The current Life Sentence Review Commissioners are renamed and their role extended to include these functions. The Parole Commissioners provisions largely replicate and replace those already in law by way of the Life Sentences (NI) Order 2001.

Part 3 - Risk Assessment and Management

2.17 Part 3 creates a duty on a number of criminal justice agencies and others to more effectively assess and manage the risk posed by certain persons in the community, where that risk can best be managed by agencies sharing information and working together.

2.18 The agencies that will be operating the guidance are specified and include the police, the prison service, probation service, the NSPCC, and relevant Government Departments or agencies.

2.19 The powers do not give any additional statutory powers to individual agencies but seek to maximise the effectiveness of their existing statutory functions through multi agency working. Guidance, prepared by the agencies and approved by the Secretary of State, will provide the detail of how the arrangements will operate in practice. An annual report must be prepared.

Part 4 – Road Traffic Offences

2.20 Part 4 of the Order contains new powers to address three areas of road traffic law. “Bad driving”, including a new definition of “careless driving”; a new offence of “causing death, or grievous bodily injury by careless driving”; and more severe penalties for unlicensed, disqualified or uninsured drivers who cause death by driving. “Drink driving” including tighter laws on failing to allow specimens to be tested; police powers to requiring breath specimens; and regulations regarding ‘alcohol ignition interlock’ programmes. And a series of police powers to seize vehicles causing alarm, distress or annoyance (mini-scooters being raced around public streets); and to regulate the use of devices used by some motorists to avoid speed detection.

Part 5 – Miscellaneous and Supplementary

Purchase and Consumption of alcohol

2.21 Part 5 makes provision for combating alcohol-related disorder and addresses the problem of the sale of alcohol to minors. A “test purchase” power is to be created to allow police officers to identify bars and off-licences selling alcohol to under 18s. The test purchase power can only be used under the direction of a police constable; with parental consent; and with a requirement to avoid any risk to the welfare of the minor.

2.22 Powers are also created to deal with the consumption or possession of alcohol in designated public places where there is a problem of anti-social behaviour associated with drinking alcohol. An offence would be committed when a person failed to comply with a constable's request not to drink alcohol, or with his request to surrender alcohol. Public places would be designated by District Councils. The maximum penalty on conviction of the new offence would be a fine of up to £500. Fixed financial penalties of up to a quarter of that level would be available as an alternative to prosecution.

Prisons

2.23 A number of amendments are proposed to the Prison Act (Northern Ireland) 1953, including minor miscellaneous changes concerning medical officers and amendments to better control, regulate and modernise prison security. Amendments to the laws on assisting a prisoner to escape and conveyance of prohibited articles into or out of prison including drugs, weapons, mobile phones, satellite phones and cameras are also provided, with increased penalties.

Live Links

2.24 The Draft Order contains a number of provisions designed to consolidate the law on and increase the use of live video links. Such facilities are already in use for prison remand purposes and have the benefit of providing a cost-effective and secure means for prisoners to participate in remand hearings without having to be transported to court. The new powers will expand the use of video links in Courts to include, in certain circumstances: preliminary hearings, sentencing hearings, evidence of vulnerable accused, and appeals under the Criminal Appeal Act.

Legal Aid

2.25 Two technical amendments are made in relation to legal aid provision. These amendments are to the Access to Justice (Northern Ireland) Order 2003 and relate to legal aid for proceedings relating to anti-social behaviour orders and to proceedings under the Proceeds of Crime Act 2002.

Police and Criminal Evidence

2.26 Amendments being made to the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE”) alter the police authorisation level required for certain procedures; introduce trigger powers for entry into premises in particular circumstances; and create new powers to allow police to attach conditions to bail before charge.

Penalties

2.27 New sentencing powers extend the maximum penalties available to the courts for certain offences relating to *knives*, though they also include crossbows and other offensive weapons. Broadly the new penalties will relate to offences of possession, manufacture and sale. The provisions introduce a standard set of maxima – 12 months’ imprisonment and/or a £5000 fine where a person is convicted in a magistrates’ court; 4 years and/or an unlimited fine for convictions in the Crown Court.

2.28 New powers are also created for courts to impose a *driving disqualification for any offence*. This is designed to allow courts to disqualify from driving individuals convicted of offences which might involve vehicles but are not ‘motoring’ offences *per se*.

Proving execution of arrest warrants

2.29 New provisions are proposed to enable a wider range of magistrates’ courts to hear the proving of the execution of arrest warrants.

2.30 In appropriate circumstances an arrest warrant issued in one County Court Division could be proven in the Division of arrest or in a County Court Division which adjoins the Division of arrest. The transport of defendants across court divisions would be reduced providing a more effective and efficient procedure.

Anti-Social Behaviour Orders

2.31 Two adjustments are made in relation to legislation relating to anti-social behaviour orders. To allow existing interim order powers to operate more effectively, applications will be possible without notice, and a technical amendment is also included to enable rules of court to be made for special measures for witnesses.

Youth Justice

2.32 A number of adjustments are made to youth justice legislation. Rehabilitation periods for youth conference orders, reparation orders and community responsibility orders are clarified. Powers are also created to allow children aged 17 who require custody to be accommodated in a juvenile justice centre if no suitable accommodation is available in a young offenders centre; clarifying the period a youth conference order remains in force; removing the requirement for a care order to be suspended whilst a child is serving a juvenile justice centre order; and the powers of the youth court to notify the appropriate authority where it has concerns regarding the welfare of a child are extended.

Part 6 - Supplementary

2.33 Part 6 provides for the statutory procedures for regulation, order or rule making powers by the Secretary of State; the making of incidental or consequential provisions and any transitory transitional or savings provisions; amendments and repeals.

PART III: DETAILED PROVISIONS OF THE PROPOSED DRAFT ORDER

PART 1: INTRODUCTORY

Article 1: Title and commencement

3.1 This article provides for the title and commencement of the provisions of the Criminal Justice (Northern Ireland) Order 2007. The provisions listed in paragraph 1(2) would come into force one month after the day on which the Order was made. The remaining provisions in the Order would be brought into force by order. Any provision in this Order which alters a penalty for an offence has effect only for offences committed after the commencement of the provision paragraph 1(4)

Article 2: Interpretation

3.2 This article applies the Interpretation Act (NI) 1954 to the Order.

PART 2: SENTENCING

Dangerous Offenders

Article 3: Meaning of specified offences

3.3 This article provides the definition of specified and serious offences for the purposes of the dangerous offenders' provisions. This is the core definition that will direct whether or not the public protection sentence provisions are engaged in a conviction. The specific offences are provided by Schedules 1 and 2.

3.4 Serious offences are detailed in Schedule 1 and are those that can engage either the Indeterminate Custodial Sentence or the Extended Custodial Sentence. Specified offences in Schedule 2 also engage the ECS and are relevant to the ICS and are divided into Part 1 for violent offences and Part 2 for sexual offences (see Schedule 1 and Schedule 2 for more detail).

3.5 Article 3(3) also provides the definition of serious harm as death or serious personal injury, whether physical or psychological.

Article 4: Life sentence or indeterminate custodial sentence for serious offences

3.6 This article creates an indeterminate custodial sentence for public protection (“the ICS”). An ICS may only be passed by a court if the offender is convicted of a serious sexual or violent offence (as defined in Schedule 1) and the court considers that the offender poses a significant risk of serious harm by committing further specified offences (4(1)(b)). The ICS provides for the indeterminate imprisonment of those dangerous offenders who continue to pose a significant risk of serious harm to the public.

3.7 Where the offence is one in which an offender could be liable to a life sentence, the court must pass a discretionary life sentence if the seriousness of the offence requires it ((4)(2)). The court cannot use the ICS in place of the life sentence. In all other cases Article 4(3) provides that the court must impose an ICS if it considers that an ECS (an Extended Custodial Sentence imposed under Article 5) would not be adequate to protect the public.

3.8 When imposing an ICS the court must specify the minimum period (at least 2 years) that will be served (4(3)). After the offender has served this minimum period, his release will be dependent on the recommendation of the Parole Commissioners. (Release provisions are set out in more detail in Chapter [3]).

3.9 Paragraph 6 amends section 1 of the Treatment of Offenders Act (Northern Ireland) 1968 to allow a court, where it has the power to do so, to pass a public protection sentence of imprisonment under this Article on those under 21 years of age. Custodial sentence is defined for the purposes of the Article as meaning a sentence of detention under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998; a sentence of detention in a young offenders centre for those under 18 years of age; and a sentence of imprisonment for those aged 18 or over (4(7)).

Article 5: Extended custodial sentence for certain violent or sexual offences:

3.10 This article creates an extended custodial sentence for public protection (“the ECS”) for those convicted of specified violent and sexual offences and who, in the judgment of the court, pose a significant risk of serious harm to the public (5(1)(b)). Paragraph (2) provides that the extended sentence is made up of the ‘appropriate custodial term’ and an ‘extension period’.

3.11 The appropriate custodial term is the period that the court considers appropriate to reflect the seriousness of the offence or the combination of offences (as provided in Article 12). The minimum period for the ECS will be 12 months (5(3)(b)).

3.12 The court must also specify an extended period of supervision on licence to be added to the sentence for the purpose of public protection. That can be an extension period of up to five years for violent offenders and eight years for sexual offenders (5(4)(a) and (b)). The total term of the extended sentence must not be more than the maximum penalty available for the offence in question (5(5)).

3.13 During the second half of the appropriate custodial term the offender may be released on the recommendation of the Parole Commissioners (see Article 7 for release provisions).

3.14 Paragraph 6 defines maximum term for the purposes of this Article as the maximum term of imprisonment, other than an ICS, allowed for the offence when the offender is aged 21 or over. Paragraph 7 defines custodial sentence as including a sentence of detention in a young offenders centre; a sentence of detention under Article 45(2) of the Criminal Justice (Children)(Northern Ireland) Order 1998 and a sentence of imprisonment. A court must not impose such a sentence of imprisonment if the offender is under 18 years old or for a term of less than 4 years if the offender is 18 or over but under 21 years old (5(8)(a) and (b)).

Article 6: The assessment of dangerousness

3.15 This article provides for the assessment of dangerousness in ICS and ECS sentences. It specifies the requirements for the court to establish whether the offender poses a significant risk to members of the public of serious harm by committing further such offences and therefore whether the offender is eligible for an ECS or ICS.

3.16 The offender must first of all have been convicted on indictment of a specified offence. Unless the court is of the opinion that one is unnecessary, it must then obtain and consider a pre-sentence report; must take into account all the information available to it about the nature and circumstances of the offence and; may also take into account any information about the pattern of behaviour of which the offence forms a part and any information about the offender (6(2)(a)-(c)). (The requirements for pre-sentence reports are provided under Article 14(2) of the Order).

Article 7: Release on licence of prisoners serving sentences under Article 4 or 5

3.17 This article sets out the release provisions for the indeterminate and extended custodial sentences. A prisoner must serve the relevant part of his sentence before he becomes eligible for release.

3.18 For an ICS, the relevant part is the minimum period or 'tariff' specified by the court (7(2)(a)). For an ECS sentence, the relevant part is one half of the appropriate custodial term (Article 5) as directed by the court (7(2)(b)).

3.19 Once a prisoner has served the relevant part and the Parole Commissioners have directed his release, the Secretary of State must release the prisoner on licence (7(3)(a) and (b)). The Commissioners cannot direct the prisoner's release unless the Secretary of State has referred the case to them and the Commissioners are satisfied that it is no longer necessary for the prisoner to be confined to protect the public from serious harm (7(4)(a) and (b)).

3.20 If the Commissioners do not direct the prisoner's release after a case is referred to them, the Secretary of State must refer the case to them again within two years (7(6)). For an ECS, as soon as the prisoner has fully served the appropriate custodial term (that is, he has not been released by the Commissioners and has served the full custodial sentence), the Secretary of State shall release the prisoner on licence unless he has previously been recalled under Article 27 (7(8)).

3.21 Where an ICS or ECS prisoner has been released on licence, the Secretary of State may not by virtue of Article 23(4) subsequently include, vary or cancel a licence condition except after consultation, including consultation about implementing such conditions generally, with the Parole Commissioners.

Article 8: Sentences under Article 4: duration and termination of licences

3.22 This article provides for the duration and termination of licences for those sentenced to ICS sentences. Unless revoked, ICS licences remain in force for the rest of the prisoner's life (8(2)). After a qualifying period of 10 years since the date of release (8(3)), the licensed prisoner can apply to the Parole Commissioners to have his licence revoked. The Commissioners must consider whether it is necessary for the protection of the public that the licence should remain in force (8(6)). On the direction of the Parole Commissioners, the Secretary of State may order that the licence ceases to have effect (8(4)).

3.23 If the Commissioners do not direct that the licence cease to have effect, the prisoner must wait 2 years before reapplying, or such shorter period as the Commissioners may specify (8(5)(b)).

Article 9 Determination of day when offence committed

3.24 This article provides that where an offence has been committed over two or more days, it should be treated as having been committed on the last of those days.

Custodial Sentences

Article 10: Interpretation

3.25 Article 10 provides for the interpretation of terms used in this part of the Order. It defines custodial sentences as imprisonment including life and determinate prison sentences; detention at the Secretary of State's pleasure and detention in a young offenders centre; and a juvenile justice centre order. For the purposes of the sentencing part of the Order, a sentence of imprisonment does not include committal to prison for fine default or for contempt of court. It also defines a pre-sentence report; as being a written document; that consecutive sentences shall be treated as a single term (10(2)) and describes when offences are associated with each other (10(4)).

Article 11 Restrictions on imposing discretionary custodial sentences

3.26 This article establishes the basic criteria for the imposition of custodial sentences largely through the re-enactment of Article 19(2) of the Criminal Justice (Northern Ireland) Order 1996. A court must not pass a custodial sentence, unless it is the opinion that the offence or the combination of the offence and one or more offences associated with it, was so serious that only imprisonment can be justified.

3.27 Excluded from this are those offences where the punishment is a life sentence, a "dangerous offender" sentence (under Articles 4-5 of the draft proposed Order), or certain firearms and other weapons offences where minimum sentences are set in law (i.e. those with a statutory minimum custodial term).

3.28 A court is not prevented from passing a custodial sentence on an offender who fails to consent to requirements imposed as part of a community sentence (where such consent is required) or if he refuses to comply with a Drug Treatment and Testing Order or with a Youth Conference Order (11(3)). Where a court passes a custodial sentence, it will generally state in open court that it is of the opinion referred to and why it is of that opinion and in any case explain to the offender, in ordinary language, why it is passing a custodial sentence (11(4)).

Article 12 Length of discretionary custodial sentences

3.29 This article establishes the general principle for setting the length of a custodial sentence largely through the re-enactment of Article 20(a) of the Criminal Justice (Northern Ireland) Order 1996. Any term must be commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it.

3.30 Excluded from the requirements are sentences that are fixed by law and the 'ICS' provided by Article 4 of the draft proposed Order. They are also subject to the requirements of the 'ECS' sentence provided for by Article 5. Nor do they apply to offences which have a statutory minimum custodial term (12(3)) nor in the case of a discretionary life sentence; or a under the new sentence of imprisonment or indeterminate detention for public protection provided by Articles 4 and 5 of the Draft Proposed Order (12(1)).

Article 13 Length of custodial sentences

3.31 This article provides that where a court is passing a sentence that it shall specify a period (the custodial period) at the end of which the offender is to be released on a licence (13(2)). The custodial period is not to exceed one half of the term of the sentence (13(3)) and the licence period is the period the court thinks appropriate to take account of the offender's supervision by a probation officer (13(5)).

Article 14 Procedural requirements for custodial sentences

3.32 This article provides that when a court is considering whether to impose a discretionary custodial sentence and how long it should be, the court must take into account all the information available to it, including information about the offence(s). Before imposing such a sentence, the Court must obtain a pre-sentence report (14(2)) though need not do so if it considers it unnecessary to do so in any individual case (14(3)). Article 14(4) provides further protection for young offenders and the court must not dispense with the requirement to obtain a pre-sentence report, unless there already is one that relates to the offender and the court has access to it.

3.33 Other provisions relate to validity in sentencing in the absence of pre-sentence reports (14(5)) and appeals (14(6)).

Article 15 Additional requirements in the case of mentally disordered offenders

3.34 This article re-enacts Article 22 of the Criminal Justice (Northern Ireland) Order 1996 to provide that, unless the court thinks otherwise, in the case of a mentally disordered offender the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law (15(1) and (2)). A medical report must be made orally or in writing by a registered medical practitioner. The court should consider any information before it relating to the offender's mental condition and the likely effect of a custodial sentence on the offender and on any treatment which might be available to him.

3.35 If the court does not obtain a medical report this does not invalidate any sentence passed, but on appeal the court must obtain and consider a medical report (15(4)). Mentally disordered has the same meaning as mental disorder in the Mental Health (Northern Ireland) Order 1986.

Article 16 Disclosure of pre-sentence reports

3.36 This article applies where a court obtains a pre-sentence report and provides that the court shall give a copy of the report to the offender or the offender's counsel or solicitor and to the prosecutor (16(1) and (2)).

If the offender is under the age of 18 and is not represented by counsel or a solicitor a copy of the report need not be given to the offender but shall be given to the offender's parent or guardian if present in court (16(3)). A prosecutor is only able to use the information in the pre-sentence report either for determining whether to make representations to the court or for making representations to the court about the content of the report (16(5)).

Release on Licence

Article 17: Interpretation

3.37 This article defines a fixed-term prisoner for the purposes of Chapter 3. They are those serving a determinate custodial sentence for an offence committed after the commencement of this Article (17(1)). Custodial sentence is defined as a sentence of imprisonment; a sentence of detention in a young offenders centre; and a sentence under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 but does not include sentences for those defaulting on a fine or in contempt of court (17(2)).

Article 18: Power of court to recommend licence conditions for sentences of 12 months or more

3.38 This article gives the court the power to recommend, when passing a determinate custodial sentence of 12 months or more, licence conditions that the offender should be subject to on release (18(1)). Such recommendations are not to be regarded as part of the sentence passed on the offender (18(3)). When setting such licence conditions (which it falls to the Secretary of State to do under Article 23 of this Order) the Secretary of State must have regard to the court's recommendations (18(2)).

Article 19: Duty to release prisoners

3.39 This article directs that as soon as a fixed-term prisoner, other than one serving an ECS sentence, has served the requisite custodial period directed by the court, the Secretary of State must release the prisoner on licence (19(1)). Concurrent and consecutive sentences provisions (Articles 32(2) and 33(2)) apply to the determination of the requisite custodial period (19(2)(b)).

Article 20 Power to release prisoners on licence before required to do so

3.40 This Article allows the Secretary of State to release a fixed-term prisoner on licence at any time during a set period before the end of the custodial part of his sentence (20 (1)). Release can occur during the last 135 days of custody. A prisoner must be serving a sentence of at least six weeks in custody; must have served at least half of the custodial period; and at least four weeks of his sentence.

3.41 Again, concurrent and consecutive sentence requirements apply. Paragraph (3) details seven cases to which this Article does not apply (20(3)) including ECS prisoners (the scheme as a whole does not apply to ICS prisoners), those liable to sex offender licensing, and those who have previously been recalled to prison. The Secretary of State may, by an order subject to negative resolution, amend the time frame requirements of the scheme (20(4)).

Article 21: Power to release prisoners on compassionate grounds

3.42 This article allows the Secretary of State, if exceptional circumstances exist, to release a prisoner serving on licence on compassionate grounds (21(1)). Before releasing an ICS or ECS prisoner on licence on compassionate grounds, the Secretary of State must, so long as it is practicable, consult the Parole Commissioners (21(2)).

Article 22: Duration of licence

3.43 This article provides that when a fixed-term prisoner is released on licence, the licence shall (subject to any revocation under Articles 27 or 28) remain in force for the remainder of the sentence (22(1)). Paragraph 1 has effect subject to the provisions on concurrent and consecutive terms (22(2)).

Article 23: Licence conditions

3.44 This article provides for the conditions which may be attached to a licence following a prisoner's release. For sentences of less than 12 months the conditions must include those set by the court order (23(2)(a)) and, insofar as they are compatible with the conditions set by the court, the standard conditions.

3.45 For sentences of more than 12 months the standard conditions will apply together with any other prescribed by the Secretary of State (23(3)(a) and (b)). The Secretary of State must have regard to the court's recommendations made when setting licence conditions (18(2)) and may subsequently include, vary or cancel any licence conditions under this Part (23(4)).

3.46 The Secretary of State shall not subsequently include, vary or cancel a licence condition for an ECS or ICS offender released on licence except after consultation with the Parole Commissioners (7(9)).

3.47 Any licence under Article 26 (a “conditioned early release licence”) must have a curfew condition but if a court-ordered licence in a sentence of less than 12 months has a curfew condition, the two cannot exist in parallel.

3.48 Paragraph 7 applies the arrangements on concurrent and consecutive sentences to this article (23(7)).

3.49 When establishing standard or other licence conditions (30(8)) the Secretary of State must have regard to the protection of the public, the prevention of re-offending and the rehabilitation of offenders.

Article 24: Licence conditions on re-release of prisoner serving sentence of less than 12 months

3.50 This article provides for the licence conditions on the re-release of a recalled prisoner who had been serving a sentence of less than 12 months. On re-release the licence must include the standard conditions and may include other conditions prescribed by the Secretary of State and specified in the licence (24(2)(a) and (b)). In setting other conditions, the Secretary of State must have regard to the terms of the relevant (original) court order (24)(3)).

Article 25: Duty to comply with licence conditions

3.51 This article requires any person subject to a licence under this Part to comply with conditions attached to their licence.

Article 26: Curfew condition to be included in licence under Article 20

3.52 This Article provides that a curfew condition requires the released person to remain for specified periods at a specified place and must include an electronic monitoring requirement (26(1)).

3.53 There are time limits: except for the first and the last day the curfew cannot last for more than 9 hours in any one day (26(2)). The curfew is to remain in force until the date at which the offender would have been due to be released on licence having completed his custodial part.

3.54 Paragraph (4) provides that the Secretary of State is not bound to ensure that electronic monitoring can be provided in any given part of Northern Ireland.

3.55 The Secretary of State may by order vary the number of hours available under the scheme (37). This order will be made subject to negative resolution (99(1)).

Article 27: Recall of prisoners while on licence

3.56 This article allows the Secretary of State to revoke a released prisoner's licence and recall him to prison. The prisoner must be informed of the reasons for his recall and can make written representations ((27)(3)). The Parole Commissioners then consider recalls on referral by the Secretary of State. If the Commissioners direct release, the Secretary of State must comply ((27)(5)). If a released prisoner's licence has been revoked he will be treated as unlawfully at large until returned to prison (27(6)). These requirements do not apply to prisoners released as part of a Conditioned Early Release scheme under Article 20.

Article 28: Recall of prisoners released early under Article 20

3.57 Where a prisoner has failed to comply with a "conditioned early release" or where he can no longer be electronically monitored, the Secretary of State may, if the curfew condition is still in force, revoke the prisoner's licence ((28)(1)(a) and (b)) and recall him to prison. The offender must be informed of the reasons for the recall and his right to make representations on his return to prison ((28)(2)).

3.58 The Secretary of State can cancel a revocation and the person is treated as not having been recalled to prison ((28)(4)). A person whose licence is revoked under this article can be detained in pursuance of the sentence and, if at large, is to be treated as being unlawfully at large (28(5)).

Article 29: Further release after recall

3.59 If a prisoner has been recalled while on licence and the Commissioners do not direct release, they can recommend a date for release on licence (29(1)(a)). The exception to this is for recalled ECS or ICS prisoners, where they cannot set such a prospective release date. Along with other recalls, the Commissioners may, however, recommend a date for the next review of the person's case by them (29(1)(b)) and any date set under must be within two years ((29)(2)).

3.60 If deciding to release a prisoner under paragraph (1)(a) later than the date recommended by the Commissioners - unless such consultation is impracticable - the Secretary of State must consult with the Commissioners (29(4)). The Commissioners need not make a recommendation if the prisoner is due to be released unconditionally at any time within the next two years (29(3)).

3.61 When reviewing a case under paragraph (1)(b), the Commissioners may direct the prisoner's immediate release. If they are directing the release of an ECS or ICS prisoner they must only do so if they are satisfied that it is no longer necessary for the protection of the public from serious harm for the prisoner to be confined (29(7)). In all cases the Commissioners may recommend a date for further review of the case by them and, in the case of fixed-term prisoners other than those serving an ECS, may recommend a date for release on licence (29(6)(b)).

Article 30: Conviction while licence remains in force

3.62 This Article provides for a situation where a court is sentencing an offender who has committed an offence whilst on licence under this Part and who has not been recalled to prison. In this situation the court shall inform the Secretary of State of the conviction.

Article 31: Persons liable to removal from the United Kingdom

3.63 This is an interpretative provision defining 5 ways in which a person can be considered liable to removal from the United Kingdom and therefore ineligible for conditioned early release licence under Article 20.

Article 32: Concurrent Terms

3.64 This Article provides for the application of the provisions of this part to an offender who is serving a number of sentences which are wholly or partly concurrent. The Article applies where the sentences were passed on the same occasion, or the later sentence was passed before the offender had been released from custody under the earlier sentence or sentences. The broad affect of the Article is that if the sentences were imposed on the same occasion, the offender is not to be released until he has served the requisite period of the longest of the sentences. If the sentences were imposed on different occasions, the prisoner is not to be released until he has served the requisite period which will expire last.

Article 33: Consecutive Terms

3.65 This Article provides for the application of this part to persons serving consecutive sentences, whether the sentences had been passed on the same occasion, or the second sentence has been passed on a later occasion while the person is still in custody under the first sentence. The Article will not apply to a sentence passed after the offender has been released from the first of the sentences.

3.66 The broad principle of the Article in relation to custodial sentences is that the consecutive terms are treated as an aggregate term, and the offender does not become entitled to be released until he has served a period equal to the aggregate of the requisite custodial periods in relation to each of the terms of imprisonment. The licence imposed on the offender on his release will continue in effect until he would have served a term equal to the aggregate length of the terms of imprisonment.

3.67 In the case of a sentence passed under Article 4 or 5, the period to be served before the offender becomes entitled to be released is the aggregate of the whole of the appropriate periods. The custodial period in the case of a standard determinate sentence is the period specified under Article 13(2).

Article 34: Alteration by order of relevant proportion of sentence

3.68 This Article gives the Secretary of State power to amend by order the proportion of an ICS, ECS or CSLO sentence that must be served in prison before release on licence.

Curfews and Electronic Monitoring

Article 35: Application of this Chapter

3.69 This Article defines the circumstances in which the curfew and electronic monitoring powers in the Chapter can apply. They can be applied by the court as a condition of bail ((a)). They can be part of a licence condition (set by the court or the Secretary of State as appropriate) for a sex offender licence, a life sentence, a “grave offences” licence; or can be attached to a public protection or prison sentence licence ((b)). They can be a requirement of a community disposal (a probation order, combination order; a youth conference order) ((c)); or part of a juvenile justice centre order ((d)).

Article 36: Curfew requirement

3.70 This Article defines the terms and conditions placed upon any curfew with regard to time and place. Periods cannot be less than two hours or more than twelve hours in any one day (36(2)). The authority setting the curfew must obtain information about both the proposed place and any other persons affected by the enforced presence of the person subject to the requirement (36(3)).

Article 37: Power to amend Article 26(2) or 36(2)

3.71 This Article allows the Secretary of State to amend by order the specified periods within which curfew requirements can operate by order, including curfew requirements in a ‘conditioned early release’ under Article 26.

Article 38: Requirement to avoid conflict with religious beliefs

3.72 This Article places restrictions where practicable on the making of curfews to avoid any conflict with a person's religious belief and any interference with the person's work, training or education. The Secretary of State may add additional restrictions by order (38(2)).

Article 39: Arrangements for establishing systems of electronic monitoring

3.73 This Article provides a power for the Secretary of State to make arrangements for establishing systems of electronic monitoring of persons whilst they are subject to curfew or other requirements.

Article 40: Electronic monitoring requirement

3.74 This Article defines an electronic monitoring requirement (40(1)) and requires that, if the co-operation of a person (other than the person subject to the requirement) is necessary to secure the monitoring, their consent must be obtained before the requirement is imposed (40(2)). Otherwise the electronic requirement cannot be imposed. A person responsible for the monitoring must be identified (40(3)). The responsible officer must notify the offender of the commencement of the electronic monitoring requirement and any person whose consent has been sought.

Article 41: Availability of electronic monitoring arrangements

3.75 This Article stipulates that a court cannot impose an electronic monitoring requirement unless suitable arrangements are in place in the area (as determined by the Secretary of State). The court must also be satisfied that the necessary provision can be made under these arrangements.

Article 42: Provision of copies of relevant orders

3.76 This Article requires copies of the electronic monitoring requirement to be given to the person responsible for the electronic monitoring, the person whose consent is required for the requirement to be imposed and any other person whose co-operation will affect the monitoring.

Article 43: Release of child on bail: curfew and electronic monitoring requirements

3.77 This Article places restrictions on the use of curfew and electronic monitoring requirements in terms of release of a child on bail under Article 12 of the Criminal Justice (Children)(Northern Ireland) Order 1998 (43(1)). The court cannot impose these requirements as a condition of bail unless the child would otherwise be remanded in custody to protect the public.

Article 44: Rules

3.78 This Article provides for the Secretary of State to make rules for regulating electronic monitoring, the functions of persons responsible for the monitoring and the supervision of persons subject to curfew. These rules shall be made subject to negative resolution (99(1)).

Supervised Activity Orders

Article 45: Supervised activity orders

3.79 This article creates a supervised activity order that will be available to the court if an offender were to default on the payment of a fine. The supervised activity order will require the offender to attend, be engaged in activities, and be supervised by a supervising officer (45(1)).

3.80 The place of supervision and the activities are both to be determined by the supervising officer (45(3)) and the period of supervision cannot be less than 10 hours or more than 100 hours and for those defaulting on a level 1 fine the period of supervision cannot be more than 50 hours (45(2)). Paragraph (4) introduces Schedule 3 which provides further provisions for supervised activity orders.

Article 46: Payment of sums adjudged to be paid by a conviction of a Magistrates' court

3.81 This article provides that a magistrates' court can make a supervised activity order for the default of a fine ordered under Article 91(1) of the Magistrates' Courts (Northern Ireland) Order 1981. This does not apply to those under the age of 16.

3.82 Where facilities exist for the imposition of a supervised activity order, it must be considered ahead of a custodial period in default (46(2)). Unless the offender pays the fine before the date the court sets for commencement, the supervised activity order comes into effect on the date set by the court and is deemed to be made on that date.

3.83 46(4) provides that if part of the sum is paid before the order comes into force the period specified will be reduced in proportion to the amount already paid by the proportion the amount paid bears to the whole sum (rounded up or down to the nearest ten hours) though the reduction cannot serve to reduce the specified period to less than 10 hours

Article 47: Supervised activity orders where court allows further time to pay

3.84 This article allows a supervised activity order to be made when a person applies for further time to pay. In such circumstances the court can impose a supervised activity order in default

Parole Commissioners

Article 48: Parole Commissioners

3.85 This article provides that the Life Sentence Review Commissioners, established under the Life Sentences (Northern Ireland) Order 2001 (“the 2001 Order”), will be renamed the Parole Commissioners for Northern Ireland (48(1)). In discharging their functions the Commissioners must have due regard to the need to protect the public from serious harm and have regard to the rehabilitation of prisoners and the prevention of re-offending by prisoners (48(3)).

3.86 Schedule 4 – described later in this document – is created by paragraph (5), re-enacting the provisions of the 2001 Order on the appointment of Commissioners.

3.87 In addition to their responsibilities under the 2001 Order, the Commissioners will be responsible for advising the Secretary of State on the release of ICS and ECS prisoners and on the release of any fixed term prisoner sentenced and recalled under this Order (48(6)).

Article 49: Commissioners' procedures

3.88 This article introduces Schedule 5. This re-enacts Schedule 2 to the 2001 Order providing powers for the Secretary of State to make Rules prescribing the procedure to be followed in relation to proceedings of the Commissioners.

Part 3 - Risk Assessment and Management:

Article 50: Interpretation

3.89 This is an interpretative provision defining ten bodies as “agencies” (50(1)). The Secretary of State may amend this definition of agencies by order (50(2)).

Article 51: Guidance to agencies on assessing certain risks to the public

3.90 The Secretary of State may, after consultation with the agencies, issue guidance to the agencies in connection with the assessment and management of risk posed by persons of a specified description and the agencies shall give effect to this guidance.

3.91 Such guidance may include provisions requiring the agencies to make arrangements to facilitate cooperation between each other and draw up a memorandum of cooperation. Guidance may also make provisions regarding the exchange of information between agencies. The Secretary of State must not specify a description of persons in guidance under this Article unless there is reason to believe that persons of such a description may cause serious harm to the public (51(6)).

Article 52: Review of arrangements and report on functions

3.92 This article provides that the agencies must keep any arrangements under review in consultation with two lay advisers appointed by the Secretary of State. After the end of each period of twelve months beginning with the 1st April the agencies shall publish a report on the arrangements put in place to assess and manage the risks posed by those who require multi agency risk management and their obligation to keep the arrangements under review (52(3)).

3.93 The report must include details of any arrangements and any information of a description as may be determined by the Secretary of State (52(4)).

Part 4 – Road Traffic Offences

Article 53: Causing death, or grievous bodily injury, by careless or inconsiderate driving

3.94 This article creates a new offence of causing death or grievous bodily injury by careless or inconsiderate driving (3(1)) and relevant penalties (six months imprisonment and or fine of up to £5000 for a summary offence; 5 years, a fine or both on indictment (3(3)) points and endorsements. It also creates a number of additional alternative verdicts to road traffic offences.

The new offence can be an alternative verdict to an offence of causing death or grievous bodily injury by dangerous driving or by careless driving when under the influence of drink or drugs (2(a) and 2(c)); and can have its own alternative verdict of careless and inconsiderate driving (2(b)).

Article 54: Causing death or grievous bodily injury by driving: unlicensed, disqualified or uninsured drivers

3.95 This article makes it an offence to cause death or grievous bodily injury when driving without a licence (12B (a)), whilst uninsured (12B(b)) or whilst disqualified (12B(c)). As with Article 53, the penalties are six months imprisonment and or fine of up to £5000 for a summary offence; 5 years, a fine or both on indictment (3(3)) points and endorsement.

Article 55 Speed assessment equipment detection devices

3.96 This article allows regulations to be made around the use of “speed assessment equipment detection devices” – devices which can detect or interfere with police speed detection facilities (5(1)). Breach of any requirement in the regulations can attract a penalty of either a level 3 fine (up to £1000) for a standard or level 4 (up to £2500) on a special road (5(4)).

Article 56: Failure to stop a vehicle

3.97 This article increases the penalty for failing to stop when required by a police constable from a level 3 to a level 5 fine (up to £5000).

Article 57: Furious driving

3.98 This article allows for disqualification and licence endorsement in offences of “furious driving” - where bad driving occurs on private property. Disqualification would be discretionary and endorsement obligatory.

Article 58: Power to require specimens of breath at roadside or at hospital

3.99 This article provides a series of powers around the taking of breath samples in drink driving cases. Police will have powers to arrest without warrant even where the breath device has not produced a reliable indication ((8(2)); to detain at or near the place instead of going to a police station (8(3)); and provides for specimens to be taken in hospitals (8(4)). It also makes a series of provisions under which a constable may impose a breath test requirement.

3.100 Article 8(5) allows for blood or urine to be taken at a police station where a breath specimen has not been provided elsewhere; 8(7) provides that a test on a hospital patient requires medical practitioner notification and approval where appropriate. 8(8) provide police with powers around cases where specimens have been provided other than at a police station and requirements (8(9)) where the person is in hospital.

Article 59 and 60: Alcohol ignition interlocks

3.101 These articles create a series of powers under proposed Articles 38A, 38B, 38C, 38D, 38E and 46A of the Road Traffic Offenders (Northern Ireland) Order 1996. These powers would give offenders the opportunity to participate in an “alcohol ignition interlock programme”. Where an offender agrees the period of disqualification may be reduced.

3.102 There are specific conditions in which the provision can apply (38A) and failure to comply with the programme will result in the original full disqualification.

3.103 The programme can include elements of education and counselling. Programmes must be approved by the Department. The central feature of the scheme is that the offender may only drive a vehicle fitted with an interlock device that prevents the vehicle being driven until a specimen that does not exceed the specified amount has been given. Article 60 provides for an experimental period for the programme.

Article 61: Meaning of driving without due care and attention

3.104 This article defines driving without due care and attention as driving in a way that falls below what would be expected of a competent and careful driver and applies it to three relevant road traffic offences (12A(1)-(3)). It also defines without reasonable consideration as being in a way that inconveniences other people (12A(4)).

Article 62: Extension of offence under Article 14 of the 1995 Order

3.105 This article allows prosecution for causing death or grievous bodily injury by careless driving whilst under the influence of drink or drugs where, without reasonable excuse where the person consent to a laboratory blood test. Failure to give permission can be an alternative verdict.

Article 63: Alternative verdict on unsuccessful manslaughter prosecution

3.106 This article allows an alternative verdict to a charge of manslaughter in four offences: causing death or GBH by dangerous driving; dangerous driving; causing death or GBH by careless driving whilst under the influence of drink or drugs; and furious driving.

Article 64: Seizure of vehicles used in manner causing alarm, distress or annoyance

3.107 This article gives police powers to deal with anti-social use of motor vehicles on or off public roads. These include powers to stop, seize and remove vehicles where they are being driven off-road or on a public road without due care and attention (14(3)). Police may enter premises other than private dwelling houses to exercise these powers. Police must warn the person (14(4)) and it is an offence to fail to stop when required (14(6)).

Article 65: Retention etc. of vehicles seized under Article 72

3.108 This article allows the Secretary of State to make regulations around the seizure of vehicles under Article 14.

Part 5 – Miscellaneous and Supplementary

Purchase and consumption of alcohol

Article 66: Test purchases of alcohol

3.109 This article provides police with a power to test for sales of alcohol to minors by allowing them to undertake test purchase operations. The provision adjusts the Licensing (NI) Order 1996 to allow a person under 18 years of age, under the direction of a police constable acting in the course of his duty, to enter licensed premises (Article 60A(1)) to seek to purchase alcohol (through the adjustment of Article 60(2)(a) and (4) of the Licensing (NI) Order).

The police officer must take all reasonable steps to avoid risk to the person undertaking the test purchase exercise and must obtain parental consent in writing for the young person involved (60A(2)(a) and (b)).

Article 67: Alcohol consumption in designated public places

3.110 This Article gives police constables a power to require individuals (a) not to consume intoxicating liquor or (b) to surrender any such liquor in their possession. Failure without reasonable excuse to comply with such a request would be a criminal offence, with a maximum penalty on summary conviction of a level 2 fine (currently £500). The offence applies only in a public place designated by a district council.

Article 68: Fixed penalty notice for offence under Article 67

3.111 This article details the fixed penalty notice regime that is to be available to constables as an alternative to prosecution. A person who pays the fixed penalty issued to him within a stated period (not less than 14 days) would not be prosecuted for the offence. Initially, fixed penalties would not be issued to anyone under the age of 16. However, this article allows for that age to be reduced by order of the Secretary of State, making suitable provision for notification to, and payment by, parents or guardians.

3.112 It also places an upper limit on the penalty; and it sets out how payment is to be made – usually to clerks of petty sessions – and how payment or non-payment is to be treated by the courts and others.

Article 69: Designated public places

3.113 This article stipulates the arrangements that would apply to the designation of public places by district councils. They must be public places in the district of the council, excluding licensed premises or registered clubs. Councils must first be satisfied that such places are associated with alcohol-related nuisance, annoyance or disorder. The Secretary of State is to make regulations governing the procedure to be followed by councils.

Article 70: Effect of Articles 67 and 69 on byelaws

3.114 This article makes transitional provision for the corresponding bye-laws made by district councils to cease to have effect as places are designated under Article 69. After 3 years, any remaining drinking-in-public bye-laws would cease to have effect.

Article 71: Interpretation of Articles 67 to 70

3.115 This article specifies how certain expressions used in Articles 67 to 70 are to be interpreted.

Prisons

Articles 72 and 73: Removal of requirement to appoint medical officers and Abolition of right of justice of the peace to visit prisons

3.116 These articles remove two outdated provisions from the Prison Act (NI) 1953. The statutory requirement for medical officers to be appointed for prisons (72) is removed - medical cover is provided by General Practitioners supported by health care staff - as is the right of a justice of the peace to visit a prison at any time (73). Visits and inspections are regularly carried out by Independent Monitoring Boards, HM Inspector of Prisons, and Criminal Justice Inspectorate in Northern Ireland.

Article 74: Assisting a prisoner to escape

3.117 This article creates a new, single offence of assisting or permitting a person including a prison officer or a police constable to escape from lawful custody applying to person who assists a prisoner to escape or attempt to escape from legal custody. Triable on indictment, it can attract a maximum penalty of 10 years imprisonment (74(3)).

Article 75: Facilitating escape by conveying things into prison

3.118 This article modernises the current offence of assisting escape by conveying things into prison again with a penalty of up to 10 years imprisonment.

Article 76: Conveyance of prohibited articles into or out of prison

3.119 This article updates and replaces current laws on the smuggling of items into prison. Current law deals only with the smuggling of intoxicating spirits or tobacco. The new powers will include mobile phones, sound recording devices and cameras. New section 34 creates List A, B and C which list prohibited items. "A" lists dangerous articles and controlled drugs; "B" includes alcohol, mobile phones, cameras and sound devices; "C" is anything prescribed in prison rules. Lists A and B can be modified by the Secretary of State (34(7)). 34A and 34B create offences around conveying articles without authorisation and defences to such charges.

Article 77: Other offences relating to prison security

3.120 This article creates new offences of taking photographs/images or making sound recordings in prison (77(1)) or transmitting them without authorisation. It is also an offence to take restricted documents from a prison (77(3)). Authorisation procedures by the Secretary of State, the prison governor, or others with a governor's approval are provided in 77 (6), (7) and (8).

Live Links

Article 78: Live links: Introductory

3.121 This article provides the introductory text and definitions for Articles 78 and 79; live link provisions in preliminary and sentencing hearings respectively. They allow the accused to be treated as present in court when attending through a live link (78(2)); make definitions including what a preliminary hearing or sentencing hearing is (3(c) and (d)). The core definition of a live link is that the person in custody can see and hear and be seen and heard by the court (3(b)).

Article 79: Use of live link at preliminary hearings

3.122 This article permits live links in preliminary hearings in magistrates' or Crown Courts subject to a series of requirements. These include the ability of the parties to the hearing to make representations (79(5)); the giving of reasons (79(6)); powers of adjournment (79(7) and (8) if a link fails; and an 8 day maximum period of remand where such an event occurs (79(9)).

3.123 Articles 78 and 79 largely replicate powers already in law that are being repealed in parallel to effect the consolidation and re-commencement of "live links" powers in a single piece of legislation.

Article 80: Use of live links at sentencing hearings

3.124 This article permits live links to be used in sentencing hearings in the magistrates' or Crown Courts where the convicted person is likely to be held in custody during a sentencing hearing.

A court can act of its own motion or on application by one of the parties (80(4)). The offender's consent is required for the live link (4)(a) for his giving of oral evidence (6(a)).

Article 81: Evidence of vulnerable accused

3.125 This article permits the giving of evidence by live link by an accused person where a number of conditions are met. In essence the live link is available where the accused is vulnerable: if under 18 this is based on intellectual ability or social functioning (4(a)); if 18 or over this is based on mental disorder or significant impairment of intelligence and social function (5(a)).

3.126 The powers are to enable those persons to participate more effectively in the proceedings as a witness. For a live link to be directed the judge and jury (where there is one), each of the accused (if more than one), legal representatives, and interpreters (where involved) must be able to be seen and heard by the accused.

Article 82: Live links in appeals under Criminal Appeal Act

3.127 This article allows appeals in the Court of Appeal Criminal Division to allow such appeals to be heard by live link. They can apply where the appellant is expected to be in custody but is entitled to be present (82(1)) (2A).

3.128 There are requirements for the appellant to be able to see and hear proceedings (2B)(b) and the opportunity to make representations (2C)(a). The Secretary of State must notify courts that live link facilities are available (2D). Evidence cannot routinely be given by live link - only where specifically included in the direction (82(2)).

Legal Aid

Articles 83 and 84 Civil legal services for anti-social behaviour orders and Civil legal services and legal aid for proceedings under Proceeds of Crime Act 2002

3.129 These articles amend legal aid legislation in the Access to Justice (Northern Ireland) Order 2003. Article 83 allows legal aid to be made available for full and interim anti-social behaviour orders on conviction (Article 3 of the Anti-social Behaviour (NI) Order 2004); and Article 84 corrects a numbering error.

Police and Criminal Evidence

Article 85: Entry for purposes of arrest

3.130 This article provides for a police power of entry to effect arrest for four additional offences. The offences are common assault (c)(i); riotous behaviour in a public place (c)(ii); harassment (c)(iii); and contravention of a non-molestation order (c)(iv).

Article 86: Pre-charge Bail

3.131 This article amends the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE") to allow the police to attach conditions to bail granted after arrest but before charge. Paragraph (2) specifies that the police can now attach conditions to those released on bail under Article 38(2) or (7)(b) of the 1989 Order. Paragraph (3) inserts new text into the 1989 Order to provide that an individual may make an application to a magistrate's court to seek a variance of conditions of bail, that they may be arrested for breach of police bail conditions and that anyone so arrested, must be brought to a police station as soon as possible after arrest.

Article 87: Authorisation of X-Rays and Ultrasound Scans

3.132 The article has the effect of lowering the police authorisation level for the taking of an x-ray or the carrying out of an ultrasound scan for the purposes of ascertaining whether an arrested person has swallowed a Class A drug from the rank of superintendent or above to inspector or above.

Article 88: Police Officers performing duties of higher rank

3.133 This article makes changes to the police authorisation levels for officers to exercise the powers of the next rank in connection with the investigation of offences or treatment of persons in police custody. In effect a chief inspector can act for a superintendent where he has been authorised by an officer higher than superintendent level (88(1)(a)) and a sergeant can exercise the powers of an inspector if he has been authorised by someone of at least the rank of superintendent (88(2)).

Penalties

Article 89: Increase in maximum sentences for offences relating to knives, weapons etc.

3.134 This article extends the maximum penalties for certain offences which include possession, manufacturing or selling of knives or offensive weapons. The provisions introduce a standard set of maxima – 12 months' imprisonment and/or a £5000 fine where a person is convicted in a magistrates' court; or 4 years and/or an unlimited fine for convictions in the Crown Court.

3.135 These include offences relating to crossbows (paragraph (2)); having a knife etc in a public place (3) or on school premises (4); possessing an offensive weapon (5); a number of offences around the manufacture, sale or unlawful marketing of knives; and selling a knife to a person under-18 (8).

Article 90: Driving Disqualification for any offence

3.136 This article provides courts with the power to disqualify an offender from driving on conviction of any offence – not only a motoring offence. Disqualification can be in addition to or instead of any disposal which the court might choose to impose (90(1)).

Requirements upon the offender to produce his licence are provided (90(4)); procedures around the removal of disqualifications (90(5)); and definitions (90(7)) are also included.

Proving execution of arrest warrants

Article 91 Jurisdiction of magistrates' court in relation to proving execution of arrest warrant

3.137 This Article provides new powers in respect of three specific types of arrest warrant to enable a wider range of magistrates' courts to hear the proving of the execution of those warrants. The three types of warrant are those provided by Articles 20 and 25 of the Magistrates' Courts (NI) Order 1981 and Article 6 of Criminal Justice (NI) Order 2003.

3.138 The powers enable the execution of those warrants issued by a lay magistrate or resident magistrate or a magistrates' court in one County Court Division to be proven in a magistrates' court in the County Court Division of arrest or in a magistrates' court in a Division adjoining the County Court Division of arrest. The court will have no jurisdiction to deal with the case other than as follows: it will be able to hear the proving of the execution of the arrest warrant; it may hear a legal aid application in connection with same; and it may remand the arrested person either on bail or in custody to appear again at a court sitting in the County Court Division which issued the arrest warrant.

Anti-Social Behaviour Orders

Articles 92 and 93: Applications for interim order and Special measures for witnesses in proceedings for anti-social behaviour orders

3.139 These articles provide additional powers around anti-social behaviour laws. Article 92 allows for an interim "ASBO" to be applied for without notice being given to the defendant. Article 93 makes a minor technical amendment to the rule making powers under the Anti-social Behaviour (Northern Ireland) Order 2004 to allow rules relating to special measures in criminal proceedings to be modified and applied to ASBO proceedings.

Youth Justice

Article 94: Rehabilitation of Offenders

3.140 This article amends the Rehabilitation of Offenders (Northern Ireland) Order 1978 to specify rehabilitation periods for youth conference orders, reparation orders, and community responsibility orders (all introduced under the Justice (Northern Ireland) Act 2002). The rehabilitation period specified for each sentence begins with the date of conviction and ends one year after the date on which the order ceases or ceased to have effect and the power will apply to both current and future periods of rehabilitation.

Article 95: Custody of children over the age of 17

3.141 This article provides for children under the age of 18 who require custody – either sentenced or on remand – to be accommodated at a juvenile justice centre or young offenders centre rather than in a prison establishment. It amends two articles of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9), which set out the circumstances in which a child can be either remanded to custody (Article 13) or sentenced to serve a juvenile justice centre order (Article 39).

Article 96: Remands by Youth Court

3.142 This article is a re-enactment of existing powers in relation to youth court remands. The existing power resides in Article 4 of the Criminal Justice (Northern Ireland) Order 1998 being repealed to allow consolidation of “live links” legislation in Articles 78 and 79. Therefore the existing youth court remand powers are now being re-enacted.

Article 97: Youth Conference Orders

3.143 This article clarifies the duration for which a Youth Conference Order will remain in force. The article amends Articles 36J of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9), by the insertion of new paragraph (2A) which confirms that the youth conference order will remain in force until the offender has complied with all the requirements as outlined in the agreed youth conference plan, or those amended by the order. This will provide a clear legislative definition as to when the youth conference order remains in force, which is not currently the case.

Article 98: Welfare of Children

3.144 The article amends two articles of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9). First, the revised wording in Article 33 extends the powers of a court to notify the appropriate authority regarding the welfare of any child brought before that court, and at any time. Previously it could only do so under specified conditions.

3.145 The second amendment sees the repeal of Article 43, which had the effect of suspending any care order whilst a child was serving a juvenile justice centre order. Withdrawing this article allows for a continuum of care and joint planning to best meet children's needs.

Part 6 – Supplementary

Article 99: Regulations, orders and rules

3.146 This article provides that any regulations, order or rules made by the Secretary of State under the Order shall be subject to annulment in pursuance of a resolution of either House of Parliament. They will be laid in Parliament before coming into force. Regulations, orders and rules made by the Secretary of State under the Order may contain such incidental, supplementary, consequential, transitory, transitional or savings provisions which the Secretary of State considers necessary or expedient in relation to the bringing into force of the Order or any part of it.

Article 100: Supplementary and Consequential Provision, etc.

3.147 This article provides that the Secretary of State may by Order make any supplementary, incidental or consequential provisions and any transitory transitional or savings provisions which the Secretary of State considers necessary or expedient for the purposes of or in consequence of giving full effect to this Order. Orders made under this provision will allow the implementation, phasing in and transitional application of the draft proposed Order's powers

Article 101: Amendment and Repeals

3.148 This article sets out in Schedule 7 the effect of minor and consequential amendments occasioned by the Order. Schedule 7 sets out those provisions which are repealed as a consequence of the Order

Schedules

Schedule 1: Serious Offences

3.149 This Schedule defines 'serious offence' for the purposes of Article 3 (2). The serious offences listed are those offences that have a maximum penalty of 10 years or more and engage the Indeterminate Custodial Sentence or Extended Custodial Sentence for the purposes of prosecution. Offences under 22 pieces of primary legislation are listed in the Schedule along with 8 other serious offences. Offences that are listed as serious offences in Schedule 1 include attempted murder, rape, manslaughter, kidnapping, offences against the person and offences under the Sexual Offences Act 2003. Paragraph 33 provides for offences of aiding, abetting, counselling, procuring or inciting the commission of any offence under the Schedule or conspiring or attempting to commit such an offence.

Schedule 2: Specified Offences

3.150 This Schedule defines specified violent offences and specified sexual offences for the purposes of Article 3(3). The specified offences listed are those offences that must, subject to the court being satisfied that it is not required to impose an ICS sentence and that there is a significant risk of serious harm to the public, engage the Extended Custodial Sentence. Specified offences are also relevant to the ICS, as in imposing an ICS the court must be satisfied that the sentence is necessary to protect the public from serious harm caused by the commission of further specified offences. This Schedule is split into Part 1 dealing with specified violent offences and Part 2 dealing with specified sexual offences. Offences under 22 pieces of primary legislation are detailed in Part 1 along with 6 other offences. Offences classified as specified violent offences include the serious violent offences listed in Schedule 1 along with additional offences.

3.151 Part 2 lists specified sexual offences under 12 pieces of primary legislation, along with the additional offences of rape and indecent assault upon a female. Offences listed as specified sexual offences include the serious sexual offences listed in Schedule 1 along with additional offences. For both specified violent offences and specified sexual offences it is an offence to aid, abet, counsel, procure or incite the commission of any offence under their respective Parts or to conspire or attempt to commit such an offence.

Schedule 3 Supervised Activity Orders: further provisions

3.152 Paragraph 1 states that a court cannot make a supervised activity order unless notified by the Secretary of State that arrangements to the court's satisfaction to deliver the order exist in the petty sessions district in which the offender lives or will live (1(1)(a)). The Court must also be satisfied that provisions can be made for the offender to carry out the necessary requirements (1(b)).

3.153 The supervised activity order must specify the petty sessions district and the offender shall be supervised by a supervising officer for that district ((2)(1)). When an offender is given more than one supervised activity order the court can direct that the requirements run concurrently or consecutively but they cannot exceed the maximum number of hours specified in Article 45 ((2)(2)). The court must provide copies of the order to the probation officer assigned to the court whose responsibility it is to then provide copies to the offender and the supervising officer in the offender's petty session district. If necessary, the court must also send copies to the relevant court (2(5))

3.154 The supervising officer must explain to the offender the purpose, effect and obligations of the order (2(4)(a)); the consequences of failure to comply with the requirements of the order (2(4)(b)); and the power of the court to review the order on application by the offender or the probation officer (2(4)(c)).

3.155 An offender serving a supervised activity order must report to the supervising officer and notify the officer of any change in address or hours or times of work ((3)(1); the order must be carried out within twelve months; but shall remain in force until the specified number of hours have been completed ((3)(2)). Any instructions given by the supervising officer should if possible avoid conflict with the offender's religious beliefs, hours of work or education ((3)(3)).

3.156 Paragraph 4 provides arrangements to deal with non-compliance of the order. If a lay magistrate concludes that the offender has failed to comply with the order or with the instructions of the supervising officer he may issue a summons or a warrant for the offender's arrest ((4)(1)). The court may revoke the order and impose a sentence of 30 days imprisonment in the case of the Crown Court and 20 days in the case of a magistrates' court. The court can also vary the number of hours specified in the order within the limits set out in Article 45 ((4)(2)).

3.157 Paragraph 5(1) gives the court powers to amend the supervised activity order on the application of the offender or the supervising officer. The court can: extend the 12 month period in which the order is to be completed; vary the number of hours specified in the order subject to the limits set out in Article 45; revoke the order or revoke it and impose specified terms of imprisonment ((5)(1)(d)). In appropriate circumstances the court may also change the petty sessions district specified in the order ((5)(2)). When exercising any of these powers, with the exception of the ability to revoke the order, when the offender has not made the application the court must summon the offender before the court and issue a warrant if the offender does not appear ((5)(3)).

3.158 Paragraph 6 allows the Secretary of State to make rules regulating the requirements of supervised activity orders ((6)(1)). Such rules may: limit the numbers of hours per day during which requirements must be met; provide for the calculation of time; make provision for types of activity to be available; make provision for travelling and other expenses to be covered; provide for records to be kept ((6)(2)). Such rules would be subject to annulment by resolution of either House of Parliament ((6)(3)).

Schedule 4: Parole Commissioners

3.159 Schedule 4 sets out the arrangements for the appointment of Commissioners. It describes their appointment, tenure, remuneration and allowances, and disqualification under the House of Commons Disqualification Act 1975. It gives the Secretary of State power to appoint a Chief Commissioner and a Deputy Chief Commissioner from among the Commissioners as well as providing the Commissioners with staff, premises and facilities.

3.160 The Secretary of State must also ensure as far as practicable that the body of Commissioners includes: at least one person who holds or has held judicial office in the United Kingdom, or has appropriate legal qualification; at least one psychiatrist; at least one chartered psychologist; at least one person with experience of post-release supervision or care; one who has knowledge or experience of working with victims of crime and at least one person who has made a study of the causes of delinquency or the treatment of offenders.

3.161 A Commissioner may only be dismissed by the Secretary of State in specified circumstances and after consultation with the Lord Chief Justice. The Chief Commissioner is required to prepare an annual report at the end of each financial year and lay it before the Houses of Parliament.

Schedule 5: Commissioners' Procedure [S2004]

3.162 Schedule 5 provides for the power of the Secretary of State to make rules prescribing the procedure to be followed in relation to proceedings of the Commissioners. The rules may provide for the allocation of proceedings to panels of Commissioners and for the taking of specified decisions by a single Commissioner. The rules may also make provision about evidence and information. The rules may provide for proceedings to be held in private except where the Commissioners direct otherwise. They may permit commissioners to exclude the prisoner and his representatives from proceedings in certain circumstances. When the prisoner and his representative are excluded, the Attorney General may appoint a person, who will not be responsible to the prisoner, to independently represent the prisoner's disposals.

Schedule 6: Amendments

3.163 This Schedule provides for amendments to 6 pieces of primary legislation for the purposes of this Order. The Treatment of Offenders Act (Northern Ireland) 1968 is amended to ensure that offenders serving an ICS or ECS who are transferred from a young offenders centre to prison are treated as if the sentence they are serving is a sentence of imprisonment.

3.164 For the purposes of rehabilitation of offenders legislation, the ICS and ECS are to be treated as never being spent and must be declared as required. Nor can they be combined with absolute or conditional discharge proposals.

3.165 The Justice (Northern Ireland) Act 2002 is amended to include the Parole Commissioners in the organisations to be inspected by the Chief Inspector of Criminal Justice. The Life Sentences (Northern Ireland) Order 2001 is amended to change the definition of 'the Commissioners' in the Order from the Life Sentence Review Commissioners to the Parole Commissioners.

3.166 The Sexual Offences Act 2003 is amended to include those sentenced to an ICS for sexual offences in the category of offenders required to notify the police about certain matters for an indefinite period.

Schedule 7 Repeals

3.167 Part 1 deals with repeals arising from the sentencing provisions. The main features are around repeals from the Criminal Justice (NI) Order 1996 and the Life Sentences (NI) Order 2001. Repeals from the 1996 Order arise through the adjustment, re-enactment and consolidation of certain sentencing principles and procedural arrangements around custodial sentences into the current proposed draft Order. They also provide for the existing custody probation order and sex offender licence disposal to be replaced with the new form of imprisonment and release on licence without remission. Both the custody probation order and sex offender licence will continue to exist for previous offences. Part 2 of the 2001 Order, which creates Life Sentence Review Commissioners, is repealed to allow them to be replaced by Parole Commissioners.

3.168 Part 2 covers repeals to allow a number of provisions to come into force within one month of the draft proposed Order being made. These include repeals to allow adjusted PACE powers, youth justice provisions, ASBO and legal aid provision to be effected. Part 3 repeals allow the new prisons powers to be effected. Part 4 deals with repeals concerning live links including allowing the consolidation of existing live link legislation within the current proposed draft Order.

PART IV: EQUALITY SCREENING AND ASSESSMENT

Approach

4.1 Given the range of provisions being created by the proposed draft Criminal Justice Order our approach is to provide information and consult in parallel on the equality screening and assessment aspects of the proposed Order.

4.2 Whilst this Explanatory Document focuses on the substantive policy proposals in the legislation our view was that equality issues might best be presented separately and consulted upon in parallel.

4.3 Each of the main topics or themes in the Order has therefore been screened individually. The outcome of that screening exercise and individual screening forms are available on line at the Northern Ireland Office website, <http://www.nio.gov.uk>

4.4 As a result of that screening exercise an Equality Impact Assessment has been carried out on the Order's sentencing provisions and related matters. Again that is available on line at the Northern Ireland Office website, <http://www.nio.gov.uk>

Overall assessment

4.5 Our overall conclusion, described in more detail in our screening assessment documentation, is that the proposed draft Criminal Justice (NI) Order is a public protection, crime reduction and prevention package for the benefit of society as a whole. As a policy package it positively benefits all Section 75 groups equally: those who may be victims as a result of their sexual orientation; gender; age including those who may be particularly vulnerable as children, by being elderly or disabled; or indeed because of their religion or politics. Whether that is in terms of public protection sentences, road safety powers, knife laws, public drinking etc. the package as a whole benefits all.

4.6 In other respects our conclusion is also the draft Order assists offenders themselves. There are provisions to help them avoid custody; to have appropriate supervision; and to assist with their rehabilitation on release. Prosecution and sentencing takes into account all the facts and circumstances surrounding a particular case before coming to a decision – the “case merits” principle is at the core – backed up by subsequent appeal mechanisms. Importantly the provisions are based on powers that already exist in England, Wales and Scotland.

4.7 The criminal law exists to protect society from activities which society (through Parliament) deems unacceptable and punishable. It applies equally to all and the overwhelming consideration must be the protection of the public from offending and from harm posed by offenders.

4.8 Our conclusion is that as a public protection, crime prevention and rehabilitation package, the proposed legislation benefits all Section 75 groups. Any impacts on offenders – who are predominantly male – are as consequence of their offending behaviours, not as a result of any of the proposals targeting offenders or males as a group. Our conclusion is that the proposed legislation is compliant with Section 75 requirements. We would welcome views on these conclusions.

Responding

4.9 Details of how to respond to the screening and assessment documents are in effect the same as for the main policy proposals.

For convenience, comments should be submitted in writing to:-

**Criminal Law Branch
Northern Ireland Office
Massey House
Stoney Road
BELFAST
BT4 3SX**

Tel: 028 9052 7142

Fax: 028 9052 7507

E-Mail: cjorder2007@nio.x.gsi.gov.uk

Written comments should be submitted by post, fax or e-mail to arrive no later than THURSDAY 31 JANUARY 2008.

4.10 If there are any complaints or concerns about the consultation process, you should contact the Northern Ireland Office's consultation co-ordinator, Donna Knowles, on 02890 527015, or by e-mail at Donna.Knowles@nio.x.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Donna Knowles
Central Management Unit
Northern Ireland Office
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH**